



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2004

Mr. John C. Fleming
General Counsel
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2004-4686

Dear Mr. Fleming:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203689.

The Texas Savings and Loan Department (the "department") received a request for certain information filed with the department "by or on behalf of Franklin National Bank." The requestor subsequently amended her request to include certain information filed with the department "involving or in any way referring to Franklin National Bank." You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.110, and 552.112 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is made confidential by other statutes. We note that the department is authorized by section 13.007 of the Finance Code to regulate state savings banks. *See* Fin. Code § 13.007. Under subtitle C of the Finance Code, which pertains to savings banks, section 96.351 provides:

Except as otherwise provided by this subtitle or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the commissioner or an examiner, supervisor, conservator, liquidator, inspector, deputy, or assistant clerk or other employee of [the department] who is appointed or acting under this subtitle:

- (1) information, regardless of the circumstances under which the information is obtained, regarding a financial institution or a

shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, other than information in a public statement or the public portion of a call report or profit and loss statement; and

(2) all related files and records of the department.

Fin. Code § 96.351. Under chapter 91 of subtitle C, a “financial institution” means “a state or federal savings bank, a state or federal savings and loan association, or a state or national bank.” *Id.* § 91.002(14). You indicate that the submitted information concerns an application for conversion of Franklin National Bank to a state savings bank and various supporting documentation. There is no indication that subtitle C or a rule adopted under subtitle C of the Finance Code allows for the release of the submitted information in this instance. *See id.* § 96.351. Accordingly, we conclude that the department must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 96.351 of the Finance Code. As our ruling is dispositive, we need not address your remaining claimed exceptions to disclosure.

You also request that we issue the department a previous determination that would allow it in the future to withhold “information covered by Finance Code § 96.351” or “applications for conversion of a financial institution into a state savings bank” in response to a request for such information without the necessity of the department having to seek a decision from our office with respect to such information. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 203689

Enc. Submitted documents

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(w/o enclosures)